

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1487 OF 2014

BALBHIM S/O RAMBHAU DAVANE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr Patil G.N
APP for Respondents: Mr S G Karlekar.

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CORAM : V.K. JADHAV, J.

Dated: August 05, 2016

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PER COURT :-

1. Heard finally with the consent of the parties.
2. Being aggrieved by the order passed by the Judicial Magistrate First Class, Bhokar dated 10.12.2013 below Exh.42 in SCC No.160/2005 and said order confirmed by the Additional Sessions Judge, Bhokar by order dated 30.9.2014 in Criminal Revision Application No.4/2014, original accused no.2 has preferred this writ petition.
3. Brief facts, giving rise to the present writ petition, are as under :-

The petitioner/original accused no.2 was working as a Deputy Engineer in P.W.D. A complaint was filed by the Returning Officer alleging therein that the petitioner/original accused no.2 though directed to remove the hoardings,

banners, writings of political parties and though, the petitioner was directed to keep the Government premises clean and tidy by removing all hoardings paintings, banners, etc., the petitioner/accused no.2 did not comply the directions given by the Chief Election Officer and therefore, the complaint is filed at police Station Bhokar by the Assistant Returning Officer. On the basis of the complaint, in due course, concerned police station submitted charge sheet against the present petitioner and one more accused. Charge sheet is submitted for the offence punishable u/s 134 of the Representation of the People Act, 1951 (hereinafter referred to as "the Act"). The petitioner/original accused no.2 has submitted an application Exh.42 in SCC No. 160/2005 for discharge. The learned Judicial Magistrate First Class, Bhokar, by its impugned order dated 10.12.2013 rejected the said application. Being aggrieved by the same, the petitioner/original accused no.2 has preferred Criminal Revision Application No.4/2014 and the learned Additional Sessions Judge, Bhokar, by its impugned order dated 30.9.2014 dismissed the said Criminal Revision Application by confirming the order passed by the learned Magistrate. Hence, this Writ Petition.

4. The learned counsel for the petitioner/original accused

no.2 submits that, even though, the allegations made in the complaint and charge sheet submitted on the basis of said allegations are accepted as it is, even then, the provisions of Section 134 of the Act are not attracted. Learned counsel further submits that, though the petitioner/original accused no.2 is Public Servant, prior sanction is not obtained for his prosecution. Learned counsel submits that, the Magistrate ought to have discharged the petitioner. The courts below have not applied their mind and, thus, erroneously rejected the application and revision respectively.

5. The learned APP appearing for the State submits that, *prima facie* there is evidence that the petitioner/original accused no.2 has not obeyed the directions given by the Chief Election Officer and thus committed breach of his official duty. The learned APP further submits that, the provisions of Section 134 of the Act are therefore rightly attracted. No interference is required. There is no substance in the writ petition. Writ Petition is liable to be rejected.

6. Petitioner-original accused no.2 is charge sheeted for the offence punishable under section 134 of the Act. The same is reproduced here :-

Section 134 in The Representation of the People Act, 1951**134. Breaches of official duty in connection with elections :-**

(1) If any person to whom this section applies is without reasonable cause guilty of any act or omission in breach of his official duty, he shall be punishable with fine which may extend to five hundred rupees. 1

[(1A) An offence punishable under sub-section (1) shall be cognizable.]

(2) No suit or other legal proceedings shall lie against any such person for damages in respect of any such act or omission as aforesaid.

(3) The persons to whom this section applies are the 2[***] 3[district election officers, returning officers], assistant returning officers, presiding officers, polling officers and any other person appointed to perform any duty in connection with 4[***] the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election; and the expression “official duty” shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act 5.”

7. On careful perusal of the provisions of Section 134 of the Act, it appears that, this Section applies if any person without any reasonable cause guilty of any act or omission in breach of his official duty. In view of Sub-section (3) of Section 134 of the Act, the person to whom this section applies are the District Election Officers, Returning Officer, Assistant Returning Officer, Presiding Officers, Polling Officers and any other person appointed to perform any duty in connection with the receipt of nominations or withdrawal of candidatures, or the recording or counting of votes at an election election. It has further made clear in sub-section (3)

of Section 134 of the Act that expression “official duty” shall for the purposes of this section be construed accordingly, but shall not include duties imposed otherwise than by or under this Act. The petitioner-original accused no.2 is not a person to whom provisions of Section 134 (3) of the Act applies. Furthermore, as per the allegations made in the complaint, Chief Election Officer has directed the petitioner to remove the banners, hoardings etc., and to keep the Government Premises clean. Said duty does not fall under the provisions of sub-section (3) of Section 134 of the Act. Assuming that said duty falls under the provisions of Sub section (3) of Section 134 of the Act, State of Maharashtra admits in its reply that, prior sanction of the Government under Section 197 of the Criminal Procedure Code is not obtained by the Investigating Officer before filing the charge sheet in this case.

8. So, in view of this, the petitioner-original accused No.2 is entitled for discharge. Both the Courts below have not taken into consideration the provisions of Section 134 of the Act as well as the fact that prior sanction to prosecute the petitioner was not taken.

9. In view of this, I proceed to pass the following order.

O R D E R

- I. Criminal Writ Petition is hereby allowed in terms of prayer clauses **“B” and “F”**.
- II. Writ Petition is accordingly disposed of.

(V.K. JADHAV, J.)

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